

The NNSA Act: Impact on DOE Directives

Presentation for:
Directives Training

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Establishment of NNSA

- Public Law 106-65, as amended
- Separately organized agency within DOE
- NNSA Administrator is responsible for
 - nuclear weapons
 - non-proliferation
 - naval nuclear propulsion

Leadership of NNSA

- Secretary responsible for establishing policy for the NNSA.
- NNSA Administrator has some degree of autonomy in deciding how to fulfill his responsibilities.
 - Administrator can establish NNSA specific-policies, subject to the disapproval authority of the Secretary.

Authority/responsibility of the Administrator

- Virtually all functions inherent in operating a “separately organized agency,” including:
 - strategic management
 - budget formulation and execution
 - legal matters
 - administration of contracts
 - public affairs

The NNSA Act in Practice

- NNSA is an integral part of DOE
- The NNSA Act includes specific authority for establishing NNSA-specific policies
- No reason to create separate policies and procedures just to be different

Impact of the NNSA Act

- The Secretary of Energy is responsible for all activities of the Department of Energy, including NNSA.
- The application of the NNSA Act should not be used as a barrier to the Secretary's cabinet-level management authority.

Impermissible: “Dual-hatting,” waiver of provisions

- **Dual-hatting:** Holding a position in both organizations
- **Waiver:** The Act does not allow the Department to waive prohibitions against
 - dual hatting
 - exercise of authority, direction or control by DOE employees other than the Secretary or Deputy Secretary.

Key Provision

- Section 3220 of the NNSA Act contains a general prohibition against non-NNSA Departmental employees (other than the Secretary or Deputy Secretary acting through the Administrator) exercising “authority, direction or control” over NNSA’s employees and contractors.
 - Except with respect to intelligence and counterintelligence activities.

Impact of the “authority, direction or control” prohibition

- Impacts only documents that establish requirements, specifically:
 - Orders
 - Manuals
 - Policies
 - Notices
- NOT documents that provide guidance:
 - Guides
 - Technical Standards

Language in Directives

- **Permissible**

- Development of:
 - Standards (NNSA must decide how to meet standards and can exempt itself from them (subject to S-1, S-2 veto))
 - guidance
 - policy by subordinate DOE organization
 - processes
- Coordination
- Notification
- Monitoring
- Gathering information
- Reviewing
- Reporting
- Recommendations

- **Impermissible**

- Authority
 - Imposition of standards
- Direction
 - Mandates
- Control
 - Approvals by subordinate DOE organizations

Example

- U/S of Science may not *direct* an NNSA contracting officer to include a certain provision in an NNSA contract.
- U/S of Science may *request* or *recommend* that the NNSA contracting officer include the provision. The Secretary or Deputy Secretary may direct the Administrator to include the provision in the contract.

Closing

- Thank you
- Questions:
 - NNSA Office of the General Counsel
 - 6F-055 Forrestal
 - 202-586-8514